

# **JOURNAL OF THE HOUSE**

## **EIGHTY-EIGHTH SESSION**

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TWENTY-SECOND DAY

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STATE OF SOUTH DAKOTA  
House of Representatives, Pierre  
Wednesday, February 13, 2013

The House convened at 2:00 p.m., pursuant to adjournment, the Speaker presiding.

The prayer was offered by the Chaplain, Pastor John Armstrong, followed by the Pledge of Allegiance led by House pages Emily Jons and Caleb Wynia.

Roll Call: All members present.

### **APPROVAL OF THE JOURNAL**

MR. SPEAKER:

The Committee on Legislative Procedure respectfully reports that the Chief Clerk of the House has had under consideration the House Journal of the twenty-first day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,  
Brian G. Gosch, Chair

Which motion prevailed.

## REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on State Affairs respectfully reports that it has had under consideration HB 1215 and returns the same with the recommendation that said bill do pass.

Also MR. SPEAKER:

The Committee on State Affairs respectfully reports that it has had under consideration HB 1045 and returns the same with the recommendation that said bill be amended as follows:

1045oa

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. That § 10-43-29.1 be amended to read as follows:

10-43-29.1. If the apportionment methods included in §§ 10-43-22.1 to 10-43-25.7, inclusive, do not fairly represent the financial institution's net income in this state, the financial institution may petition for, or the secretary may require, pursuant to criteria established by rule promulgated pursuant to chapter 1-26, with respect to all or any part of the taxpayer's business activity:

- (1) Separate accounting;
- (2) The exclusion of any one or more of the factors;
- (3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's taxable income.

The secretary may promulgate rules, pursuant to chapter 1-26, to implement the provisions of this section."

1045ota

On page 1, line 1, of the printed bill, delete everything after "to" and insert "revise certain provisions regarding alternative apportionment methods available for determination of the bank franchise tax.".

1 On page 1, delete line 2.

2 And that as so amended said bill do pass.

3 Also MR. SPEAKER:

4 The Committee on State Affairs respectfully reports that it has had under consideration  
5 HB 1217 and returns the same with the recommendation that said bill be amended as follows:

6 1217ja

7 On page 3, line 10, of the printed bill, delete everything after "shall" and insert "give  
8 written notice to the holder of the driver license or identification card that the donor designation  
9 has been removed from all department computer records."

10 On page 3, delete line 11.

11 On page 3, line 19, after "organization" insert "and any nonprofit tissue or eye donation  
12 agency which holds agreements with hospitals in South Dakota".

13 On page 4, line 8, delete "organ, tissue, and eye" and insert "the federally designated organ  
14 procurement organization and any nonprofit tissue or eye donation agency which holds  
15 agreements with hospitals in South Dakota".

16 On page 4, line 9, delete everything before "to" .

17 On page 4, line 24, after "organization" insert "and any nonprofit tissue or eye donation  
18 agency which holds agreements with hospitals in South Dakota".

19 And that as so amended said bill do pass.

20 Also MR. SPEAKER:

21 The Committee on State Affairs respectfully reports that it has had under consideration  
22 HB 1046 which was tabled.

23 Respectfully submitted,  
24 David Lust, Chair

25 Also MR. SPEAKER:

26 The Committee on Education respectfully reports that it has had under consideration  
27 HB 1198 and 1213 and SB 96 and returns the same with the recommendation that said bills do  
28 pass.

1 Also MR. SPEAKER:

2 The Committee on Education respectfully reports that it has had under consideration  
3 HB 1200 which was tabled.

4 Respectfully submitted,  
5 Jacqueline Sly, Chair

6 Also MR. SPEAKER:

7 The Committee on Appropriations respectfully reports that it has had under consideration  
8 SB 8, 9, and 22 and returns the same with the recommendation that said bills do pass.

9 Also MR. SPEAKER:

10 The Committee on Appropriations respectfully reports that it has had under consideration  
11 HB 1166 and 1172 which were deferred to the 41<sup>st</sup> Legislative Day.

12 Respectfully submitted,  
13 Fred W. Romkema, Chair

14 Also MR. SPEAKER:

15 The Committee on Judiciary respectfully reports that it has had under consideration  
16 HB 1206, 1211, 1225, and 1235 which were tabled.

17 Also MR. SPEAKER:

18 The Committee on Judiciary respectfully reports that it has had under consideration  
19 HB 1231 which was deferred to the 41<sup>st</sup> Legislative Day.

20 Respectfully submitted,  
21 Brian G. Gosch, Chair

22 Also MR. SPEAKER:

23 The Committee on Commerce and Energy respectfully reports that it has had under  
24 consideration HB 1191 and returns the same with the recommendation that said bill be amended  
25 as follows:

1 1191ta

2 On page 1, line 9, of the printed bill, delete "~~twenty-five~~ fifty" and insert "twenty-five".

3 On page 1, line 10, delete "fifty-" and insert "twenty-five".

4 On page 1, line 12, delete "fifty-" and insert "twenty-five".

5 On page 2, line 2, delete "fifty-" and insert "twenty-five".

6 On page 2, line 4, delete "fifty-" and insert "twenty-five".

7 And that as so amended said bill do pass.

8 Also MR. SPEAKER:

9 The Committee on Commerce and Energy respectfully reports that it has had under  
10 consideration HB 1194 and returns the same with the recommendation that said bill be amended  
11 as follows:

12 1194sc

13 On page 1, line 7, of the printed bill, after "the" insert "end of the".

14 And that as so amended said bill do pass.

15 Also MR. SPEAKER:

16 The Committee on Commerce and Energy respectfully reports that it has had under  
17 consideration HB 1234 and returns the same with the recommendation that said bill be amended  
18 as follows:

19 1234ra

20 On page 1 of the printed bill, delete lines 13 and 14.

21 On page 2, delete lines 1 to 3, inclusive.

22 And that as so amended said bill do pass.

23 Respectfully submitted,  
24 Roger D. Solum, Chair

**MESSAGES FROM THE SENATE**

MR. SPEAKER:

I have the honor to return herewith HCR 1004 in which the Senate has concurred.

Also MR. SPEAKER:

I have the honor to transmit herewith SB 132, 153, 185, and 205 and SJR 2 which have passed the Senate and your favorable consideration is respectfully requested.

Respectfully,  
Jeannette Schipper, Secretary

**MOTIONS AND RESOLUTIONS**

Speaker Pro tempore Wink now presiding.

HCR 1005: A CONCURRENT RESOLUTION, Recognizing November 2013 as COPD Awareness Month.

Rep. Gosch moved that HCR 1005 as found on page 302 of the House Journal be adopted.

The question being on Rep. Gosch's motion that HCR 1005 be adopted.

And the roll being called:

Yeas 70, Nays 0, Excused 0, Absent 0

Yeas:

Bartling; Bolin; Cammack; Campbell; Carson; Conzet; Craig; Cronin; Dryden; Duvall; Ecklund; Erickson; Feickert; Feinstein; Gibson; Greenfield; Haggar (Don); Haggar (Jenna); Hajek; Hansen; Hawks; Hawley; Heinemann (Leslie); Heinert; Hickey; Hoffman; Hunhoff (Bernie); Johns; Kaiser; Killer; Kirschman; Kopp; Latterell; Lust; Magstadt; May; Mickelson; Miller; Munsterman; Nelson; Novstrup (David); Olson (Betty); Otten (Herman); Parsley; Peterson; Qualm; Rasmussen; Ring; Romkema; Rounds; Rozum; Russell; Schaefer; Schoenfish; Schrempp; Sly; Soli; Solum; Stalzer; Steele; Stevens; Tulson; Tyler; Verchio; Werner; Westra; Wick; Wink; Wismer; Speaker Gosch

So the motion having received an affirmative vote of a majority of the members-elect, the Speaker declared the motion carried and HCR 1005 was adopted.

1 Speaker Gosch now presiding.

2 **CONSIDERATION OF REPORTS OF COMMITTEES**

3 Rep. Lust moved that the reports of the Standing Committees on

4 State Affairs on HB 1209 as found on page 348 of the House Journal; also

5 Agriculture and Natural Resources on HB 1093 as found on page 349 of the House Journal;  
6 also

7 Agriculture and Natural Resources on HB 1246 as found on page 349 of the House Journal;  
8 also

9 Transportation on HB 1162 as found on page 350 of the House Journal; also

10 Local Government on HB 1220 as found on page 351 of the House Journal; also

11 Taxation on SB 145 as found on page 352 of the House Journal be adopted.

12 Which motion prevailed.

13 **FIRST READING OF SENATE BILLS AND JOINT RESOLUTIONS**

14 SB 132: FOR AN ACT ENTITLED, An Act to grant limited immunity from arrest and  
15 prosecution for certain alcohol consumption related offenses to persons who assist certain  
16 persons in need of emergency assistance or who are themselves in need of emergency assistance.

17 Was read the first time and referred to the Committee on Judiciary.

18 SB 153: FOR AN ACT ENTITLED, An Act to clarify, remove inconsistencies from, and  
19 revise certain provisions relating to the formation and operation of watershed districts.

20 Was read the first time and referred to the Committee on Judiciary.

21 SB 185: FOR AN ACT ENTITLED, An Act to clarify the authority of the interim rules  
22 review committee.

23 Was read the first time and referred to the Committee on Judiciary.

SB 205: FOR AN ACT ENTITLED, An Act to authorize the hunting of wolves in certain circumstances.

Was read the first time and referred to the Committee on Agriculture and Natural Resources.

SJR 2: A JOINT RESOLUTION, Proposing and submitting to the electors at the next general election amendments to Article XI of the Constitution of the State of South Dakota, relating to the vote required to increase taxes.

Was read the first time and referred to the Committee on Judiciary.

## SECOND READING OF CONSENT CALENDAR ITEMS

SB 126: FOR AN ACT ENTITLED, An Act to revise the provisions that authorize townships to combine the offices of the clerk and the treasurer.

Was read the second time.

The question being "Shall SB 126 pass?"

And the roll being called:

Yeas 70, Nays 0, Excused 0, Absent 0

Yeas:

Bartling; Bolin; Cammack; Campbell; Carson; Conzet; Craig; Cronin; Dryden; Duvall; Ecklund; Erickson; Feickert; Feinstein; Gibson; Greenfield; Haggar (Don); Haggar (Jenna); Hajek; Hansen; Hawks; Hawley; Heinemann (Leslie); Heinert; Hickey; Hoffman; Hunhoff (Bernie); Johns; Kaiser; Killer; Kirschman; Kopp; Latterell; Lust; Magstadt; May; Mickelson; Miller; Munsterman; Nelson; Novstrup (David); Olson (Betty); Otten (Herman); Parsley; Peterson; Qualm; Rasmussen; Ring; Romkema; Rounds; Rozum; Russell; Schaefer; Schoenfish; Schrempp; Sly; Soli; Solum; Stalzer; Steele; Stevens; Tulson; Tyler; Verchio; Werner; Westra; Wick; Wink; Wismer; Speaker Gosch

So the bill having received an affirmative vote of a majority of the members-elect, the Speaker declared the bill passed and the title was agreed to.

SB 127: FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the health and educational facilities authority.

Was read the second time.



1 The question being "Shall SB 127 pass?"

2 And the roll being called:

3 Yeas 70, Nays 0, Excused 0, Absent 0

4 Yeas:

5 Bartling; Bolin; Cammack; Campbell; Carson; Conzet; Craig; Cronin; Dryden; Duvall;  
6 Ecklund; Erickson; Feickert; Feinstein; Gibson; Greenfield; Hagggar (Don); Hagggar (Jenna);  
7 Hajek; Hansen; Hawks; Hawley; Heinemann (Leslie); Heinert; Hickey; Hoffman; Hunhoff  
8 (Bernie); Johns; Kaiser; Killer; Kirschman; Kopp; Latterell; Lust; Magstadt; May; Mickelson;  
9 Miller; Munsterman; Nelson; Novstrup (David); Olson (Betty); Otten (Herman); Parsley;  
10 Peterson; Qualm; Rasmussen; Ring; Romkema; Rounds; Rozum; Russell; Schaefer; Schoenfish;  
11 Schrempp; Sly; Soli; Solum; Stalzer; Steele; Stevens; Tulson; Tyler; Verchio; Werner; Westra;  
12 Wick; Wink; Wismer; Speaker Gosch

13 So the bill having received an affirmative vote of a majority of the members-elect, the  
14 Speaker declared the bill passed and the title was agreed to.

15 **SECOND READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

16 HB 1128: FOR AN ACT ENTITLED, An Act to allow certain students to participate in  
17 the opportunity scholarship program under certain circumstances.

18 Having had its second reading was up for consideration and final passage.

19 The question being "Shall HB 1128 pass as amended?"

20 And the roll being called:

21 Yeas 35, Nays 35, Excused 0, Absent 0

22 Yeas:

23 Cammack; Campbell; Craig; Ecklund; Feickert; Greenfield; Hagggar (Don); Hagggar (Jenna);  
24 Hansen; Heinemann (Leslie); Hickey; Hoffman; Kaiser; Kopp; Latterell; Lust; May; Mickelson;  
25 Miller; Munsterman; Nelson; Olson (Betty); Qualm; Rasmussen; Russell; Schaefer; Schoenfish;  
26 Schrempp; Stalzer; Steele; Tulson; Verchio; Wick; Wink; Speaker Gosch

27 Nays:

28 Bartling; Bolin; Carson; Conzet; Cronin; Dryden; Duvall; Erickson; Feinstein; Gibson; Hajek;  
29 Hawks; Hawley; Heinert; Hunhoff (Bernie); Johns; Killer; Kirschman; Magstadt; Novstrup  
30 (David); Otten (Herman); Parsley; Peterson; Ring; Romkema; Rounds; Rozum; Sly; Soli;  
31 Solum; Stevens; Tyler; Werner; Westra; Wismer

32 So the bill not having received an affirmative vote of a majority of the members-elect, the  
33 Speaker declared the bill lost.

1 Rep. Russell announced his intention to reconsider the vote by which HB 1128 lost.

2 HB 1135: FOR AN ACT ENTITLED, An Act to regulate access to and use of public  
3 waters on public and private property.

4 Was read the second time.

5 1135tc

6 Rep. Duvall moved that HB 1135 be amended as follows:

7 On page 3, line 8, of the House Agriculture and Natural Resources Committee engrossed  
8 bill, delete everything after "46-1-3" and insert ". Recreational access to public water does not  
9 include water flowing or".

10 On page 3, delete lines 9 and 10.

11 On page 4, line 2, after "The" insert "nonmeandered public water overlying".

12 On page 4, line 3, delete everything before "for" .

13 On page 5, line 11, delete "the" and insert "each".

14 On page 7, line 16, after "shall" insert "place or".

15 On page 8, delete lines 14 and 15, and insert:

16 " Section 12. Nothing in this Act limits or restricts the public's right to recreational use of any  
17 river designated as navigable pursuant to federal law, stream defined as navigable by § 43-17-  
18 34, or any meandered lake.

19 Section 13. On any meandered lake, the provisions of this Act are subject to § 43-17-29.".

20 Which motion prevailed.

21 1135td

22 Rep. Cammack moved that HB 1135 be further amended as follows:

23 On page 8, line 1, of the House Agriculture and Natural Resources Committee engrossed  
24 bill, after "accordance" insert "with".

25 Which motion prevailed.

1 The question being "Shall HB 1135 pass as amended?"

2 And the roll being called:

3 Yeas 37, Nays 32, Excused 1, Absent 0

4 Yeas:

5 Bartling; Cammack; Campbell; Craig; Cronin; Dryden; Duvall; Feickert; Greenfield; Haggar  
6 (Don); Hansen; Heinert; Hickey; Hoffman; Killer; Kopp; Latterell; May; Mickelson; Miller;  
7 Nelson; Olson (Betty); Qualm; Rasmussen; Russell; Schaefer; Schoenfish; Schrempp; Stalzer;  
8 Steele; Stevens; Verchio; Werner; Westra; Wink; Wismer; Speaker Gosch

9 Nays:

10 Bolin; Carson; Conzet; Ecklund; Erickson; Gibson; Haggar (Jenna); Hajek; Hawks; Hawley;  
11 Heinemann (Leslie); Hunhoff (Bernie); Johns; Kaiser; Kirschman; Lust; Magstadt; Munsterman;  
12 Novstrup (David); Otten (Herman); Parsley; Peterson; Ring; Romkema; Rounds; Rozum; Sly;  
13 Soli; Solum; Tulson; Tyler; Wick

14 Excused:

15 Feinstein

16 So the bill having received an affirmative vote of a majority of the members-elect, the  
17 Speaker declared the bill passed and the title was agreed to.

18 HB 1189: FOR AN ACT ENTITLED, An Act to permit townships to levy a capital  
19 improvement property tax for highways, secondary roads, bridges, and culverts.

20 Was read the second time.

21 1189ff

22 Rep. Tulson moved that HB 1189 be amended as follows:

23 On page 1, line 6, of the House Taxation Committee engrossed bill, delete "section 4" and  
24 insert "section 2".

25 Which motion prevailed.

26 The question being "Shall HB 1189 pass as amended?"

27 And the roll being called:

28 Yeas 47, Nays 22, Excused 1, Absent 0

1 Yeas:

2 Cammack; Campbell; Carson; Craig; Ecklund; Feickert; Gibson; Greenfield; Hawks; Hawley;  
3 Heinemann (Leslie); Heinert; Hickey; Hoffman; Hunhoff (Bernie); Johns; Killer; Kirschman;  
4 Kopp; Lust; Magstadt; May; Miller; Munsterman; Novstrup (David); Olson (Betty); Parsley;  
5 Peterson; Qualm; Rasmussen; Ring; Rozum; Schaefer; Schoenfish; Schrempp; Sly; Soli; Solum;  
6 Stalzer; Steele; Tulson; Tyler; Verchio; Werner; Wick; Wink; Wismer

7 Nays:

8 Bartling; Bolin; Conzet; Cronin; Dryden; Duvall; Erickson; Haggard (Don); Haggard (Jenna);  
9 Hajek; Hansen; Kaiser; Latterell; Mickelson; Nelson; Otten (Herman); Romkema; Rounds;  
10 Russell; Stevens; Westra; Speaker Gosch

11 Excused:

12 Feinstein

13 So the bill having received an affirmative vote of a two-thirds majority of the members-  
14 elect, the Speaker declared the bill passed and the title was agreed to.

15 HB 1249: FOR AN ACT ENTITLED, An Act to provide salary assistance to counties for  
16 veterans service officers.

17 Was read the second time.

18 The question being "Shall HB 1249 pass?"

19 And the roll being called:

20 Yeas 69, Nays 0, Excused 1, Absent 0

21 Yeas:

22 Bartling; Bolin; Cammack; Campbell; Carson; Conzet; Craig; Cronin; Dryden; Duvall;  
23 Ecklund; Erickson; Feickert; Gibson; Greenfield; Haggard (Don); Haggard (Jenna); Hajek;  
24 Hansen; Hawks; Hawley; Heinemann (Leslie); Heinert; Hickey; Hoffman; Hunhoff (Bernie);  
25 Johns; Kaiser; Killer; Kirschman; Kopp; Latterell; Lust; Magstadt; May; Mickelson; Miller;  
26 Munsterman; Nelson; Novstrup (David); Olson (Betty); Otten (Herman); Parsley; Peterson;  
27 Qualm; Rasmussen; Ring; Romkema; Rounds; Rozum; Russell; Schaefer; Schoenfish;  
28 Schrempp; Sly; Soli; Solum; Stalzer; Steele; Stevens; Tulson; Tyler; Verchio; Werner; Westra;  
29 Wick; Wink; Wismer; Speaker Gosch

30 Excused:

31 Feinstein

32 So the bill having received an affirmative vote of a majority of the members-elect, the  
33 Speaker declared the bill passed and the title was agreed to.

1 HB 1142: FOR AN ACT ENTITLED, An Act to promote patient choice in selecting health  
2 care providers.

3 Was read the second time.

4 1142ja

5 Rep. Wick moved that HB 1142 be amended as follows:

6 On page 1, line 3, of the printed bill, delete "Medicaid" and insert "Medicare".

7 Which motion prevailed.

8 Rep. Bolin requested a fiscal note on HB 1142.

9 Which request was supported.

10 **SECOND READING OF SENATE BILLS AND JOINT RESOLUTIONS**

11 Rep. Lust moved that SB 41, 45, 23, 72, 18, 19, 27, 78, 86, 156, 68, and 88 be deferred to  
12 Thursday, February 14, the 23<sup>rd</sup> legislative day.

13 Which motion prevailed.

14 Rep. Steele moved that the House do now adjourn, which motion prevailed and at  
15 4:22 p.m. the House adjourned.

16 Arlene Kvislen, Chief Clerk